

REMARKS

Amended claims 42 to 50 and new claims 51 to 64 appear in this application for the Examiner's review and consideration. In response to the restriction requirement, applicants respectfully elect, with traverse, the invention of Group III, claims 42 to 50.

The Group III claims are directed to a spoonable or drinkable food product comprising on-demand dispensed portions of visually distinct food components. The new claims are directed to the same invention so that they should also be examined at this time.

New claims 51 to 53 recite preferred embodiments of the food product, while claims 54 to 64 recite a food product having phase stability upon serving without requiring substantial amount of stabilizer. Support for these claims can be found in Published Application 20030039728, page 2 paragraph [0023]. These claims should be examined with the Group III claims since the claims recite additional features of the on-demand food product. Thus, claims 42 to 50 and claims 51 to 66 should be examined together at this time.

Claims 1-41 have been cancelled without prejudice to applicants' right to file one or more divisional applications for the subject matter of those claims.

Claims 43, 49, and 50 were rejected under 35 U.S.C. 112, second paragraph as being indefinite for the reasons stated on page 4 and 5 of the Office Action. In response, the claims were amended to clarify the invention. Specifically, claim 43 was amended to remove the language objected to by the Examiner. Claim 49 was amended to recite that the food product further includes inclusions. Support for this language can be found in Published Application No. 2003/0039728 page 5, paragraph [0074]. Claim 50 was amended to clarify the invention. Support can be found at page 2, paragraph [0029]. Accordingly, the rejection under Section 112 has been overcome. Thus, Applicants respectfully request that the rejection to claims 43, 49 and 50 be withdrawn.

Claims 42 to 50 were rejected under 102(e) as being anticipated by US 6,225,320 to Daravingas et al. ("Daravingas"). Applicant traverses.

Daravingas is directed to an industrially manufactured multi-layered stirred yogurt product. Daravingas addresses the primary difficulties of developing a multi-colored, multi-phased, stirred yogurt product. The problems addressed by Daravingas includes the requirement of the use of multiple filling stations to fill container with different colored

yogurt to form a multi-layered, stirred style yogurt product. Specifically, Daravingas explains that not only does such commercial yogurt preparation require high filling line speeds of over 40 per minute, the addition of the second, different colored yogurt layer causes the two portions to immediately intermix and result in color bleeding. As stirred yogurts are not set, handling the yogurt also causes the intermixing of the colored layers. Thus, Daravingas addresses problems in the art associated with preparing a multi-colored stirred style yogurt product. In contrast, the present invention is concerned with providing product on-demand without preparation and significant waiting time.

Daravingas' solution for preparing a multi-colored, multi-layered, stirred yogurt is embodied in the use of a yogurt blend that has a lot of stabilizers and thickeners, which increase the gel structure and reduce wheying off or syneresis. Thus, the food product of Daravingas necessarily contains high amounts of stabilizers so that each layer of yogurt forms a gel-like structure such that the layering of additional and different layers are less likely to bleed or intermix into adjacent layers. Importantly, Daravingas notes that when insufficient amounts of stabilizers are used, the yogurt's filling viscosity is insufficient for preparing stable layered polyphasic stirred yogurt product.

In contrast to Daravingas, claim 42 recites a food product comprising on-demand dispensed portions of at least two visually distinct food components. Daravingas does not teach or suggest a yogurt comprising on-demand dispensed portions of any food component. Instead, Daravingas teaches a yogurt product that is required to be manufactured in the factory and requires multiple work stations for dispensing different colored yogurts. In contrast, the food product of claim 42 does not require multiple work stations for dispensing the multiple food components nor is bleeding or intermixing and issue as the finished product is not stored or packaged.

Additionally, new claim 56 recites a food product comprising on-demand portions of food components, and a food product having phase stability upon serving to an individual without requiring substantial amounts of stabilizers. Daravingas teaches away from the features of claim 56 as Daravingas requires large amounts of stabilizers to produce its multi-layered, multi-colored yogurt product.

Accordingly, as Daravingas does not disclose nor suggest the features of claims 42 to 64. Thus, none of the present claims are anticipated or even rendered obvious by Daravingas.

Claims 42 to 45, and claims 48 to 50 were rejected under 35 USC 102(b) as being anticipated by EP 1040759. Applicants traverse.

EP 1040759 is directed to a two-layer yogurt, in which the top layer consists of a fruit sauce and the bottom layer consists of a milk-based yogurt. The '759 patent addresses concerns with conventional yogurts which typically a fruit based sauce on the bottom of the container and a yogurt layer on top of the fruit sauce. Problems such as yogurt spills from the container and unbalanced taste are identified as being associated with the conventional type yogurt due to the requirement that the fruit sauce be stirred up from the bottom to mix with the yogurt in the top layer. In contrast to these "fruit on the bottom" yogurts, such as Dannon® yogurt, the '759 teaches a two-layered, "fruit on the top" yogurt which can be made in two different types; an advance-fermentation type, and a subsequent fermentation type. Each type of two-layered, "fruit on the top" yogurt product, however, has a fruit sauce layer that has a specific gravity that is less than the bottom layer yogurt. The '759 patent thus teaches that if the top-fruit sauce layer has a lower specific gravity than the yogurt-bottom layer, the layers will not become turbid, the appearance and taste will not spoil.

The '759 patent does not teach nor suggest an on-demand food product nor does it teach or suggest a transparent or translucent container containing the food product which is viewable through the container as recited in claim 42. This is not the case especially since the teaching of the '759 patent is not concerned with appearance. As stated above, it is concerned with balanced flavor between the layers and with preventing spillage caused by stirring the fruit up into the yogurt.

Further, the yogurt of the '759 patent requires a fermentation step for the yogurt component of the product before filling the yogurt in the container, referred to as "advance fermentation type 2" or after the filling of the yogurt in the container and before adding the sauce layer, referred to as "subsequent fermentation type 2." Such fermentation steps are not relevant to the food product of the claims as the food product comprises on-demand dispensed portions of the food components, which are assembled on-demand from prepared components. Additionally, the '759 patent is limited to only yogurt with fruit sauce. In contrast, present claim 44 recites that one food component can be spoonable cheese or sour cream.

Accordingly, EP '759, like Daravingas, does not teach or suggest the invention of claims 42 to 45 or 48 to 50. Applicants request that the rejection to claims 42 to 45 and 48 to 50 over EP '759 be withdrawn.

Additionally, new claims 51 to 66 are directed to preferred features of the invention and these claims are patentable over the cited references for at least the same reasons set forth above.

In view of the foregoing, it is believed that the entire application is now in condition for allowance, early notification of such would be appreciated. Should the Examiner not agree, a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims. Please call the undersigned to discuss any remaining issues in order to expedite the allowance of this application.

Respectfully submitted,
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